

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE CENTER FOR INVESTIGATIVE
REPORTING, INC.,

Plaintiff,

v.

OPENAI, INC., OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC,
OPENAI GLOBAL LLC, OAI
CORPORATION, LLC, OPENAI
HOLDINGS, LLC, and MICROSOFT
CORPORATION

Defendants.

Case No. 24-cv-04872-SHS-OTW

PLAINTIFF'S NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff The Center for Investigative Reporting, Inc. ("CIR") writes to notify the Court of a recent order in *The Intercept Media, Inc. v. OpenAI, Inc.*, No. 24-cv-01515 (S.D.N.Y. Nov. 22, 2024), ECF No. 122, attached as Exhibit 1. Like CIR, the news media plaintiff in that case brought 17 U.S.C. § 1202(b)(1) and 17 U.S.C. § 1202(b)(3) claims against OpenAI and Microsoft, which the defendants moved to dismiss for lack of standing and failure to state a claim. The court denied OpenAI's motion to dismiss as to the Section 1202(b)(1) claim and dismissed the other claims. It issued a bottom-line order. CIR will update the Court when the *Intercept* court issues a full opinion.

Notably, CIR's claims and arguments under the DMCA mirror more closely those made by the *Intercept* plaintiff than the *Raw Story* plaintiff, whose claims were dismissed on standing

grounds by another judge of this Court.^{1, 2} The decision in *The Intercept* may thus prove more instructive for this case.

November 25, 2024

Respectfully submitted,

/s/ Stephen Stich Match

Jon Loevy (*pro hac vice*)
Michael Kanovitz (*pro hac vice*)
Lauren Carbajal (*pro hac vice*)
Stephen Stich Match (No. 5567854)
Matthew Topic (*pro hac vice*)
Thomas Kayes (*pro hac vice*)
Steven Art (*pro hac vice*)
Kyle Wallenberg (*pro hac vice*)

LOEVY & LOEVY
311 North Aberdeen, 3rd Floor
Chicago, IL 60607
312-243-5900 (p)
312-243-5902 (f)
jon@loevy.com
mike@loevy.com
carbajal@loevy.com
match@loevy.com
matt@loevy.com
kayes@loevy.com
steve@loevy.com
wallenberg@loevy.com

¹ For the allegations: *Compare* First Amended Complaint, *The Center for Investigative Reporting, Inc. v. OpenAI, Inc.*, No. 24-cv-4872 (S.D.N.Y. Sept. 24, 2024), ECF No. 88 with First Amended Complaint, *The Intercept Media, Inc. v. OpenAI, Inc.*, No. 24-cv-1515 (S.D.N.Y. June 21, 2024), ECF No. 87; *but see* Complaint, *Raw Story Media, Inc. v. OpenAI, Inc.*, No. 24-cv-1514 (S.D.N.Y. Feb. 28, 2024), ECF No. 1.

For the arguments: *Compare* Plaintiff's Combined Response to Defendants' Motions to Dismiss the First Amended Complaint, at 14-35, *The Center for Investigative Reporting, Inc. v. OpenAI, Inc.*, No. 24-cv-4872 (S.D.N.Y. Nov. 5, 2024), ECF No. 133 with Plaintiff's Combined Supplemental Memorandum of Law in Opposition to Microsoft's and OpenAI Defendants' Motions to Dismiss, at 3-24, *The Intercept Media, Inc. v. OpenAI, Inc.*, No. 24-cv-1515 (S.D.N.Y. July 15, 2024), ECF No. 90; *but see* Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss, at 5-20, *Raw Story Media, Inc. v. OpenAI, Inc.*, No. 24-cv-1514 (S.D.N.Y. May 13, 2024), ECF No. 70.

² The *Raw Story* plaintiff has recently sought leave to replead. *See* Plaintiffs' Memorandum of Law in Support of Their Motion for Leave to Amend Complaint or, in the Alternative, to Continue Taking Jurisdictional Discovery, *Raw Story Media, Inc. v. OpenAI, Inc.*, No. 24-cv-1514 (S.D.N.Y. Nov. 21, 2024), ECF No. 119.